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Attorneys for Defendant  
COSTCO WHOLESALE CORPORATION

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

ELIA QUINTANA, an Individual,

Plaintiff,

vs.

COSTCO WHOLESALE CORPORATION, a  
Washington Corporation; and DOES 1 to 50,  
inclusive,

Defendants.

Case No.

Underlying Case No. 20CV367174 (Santa  
Clara County Superior Court)

**NOTICE OF REMOVAL TO FEDERAL  
COURT**

[Diversity of Citizenship,  
28 U.S.C. §§ 1332, 1441 & 1446]

1 TO THE CLERK OF THE ABOVE-NAMED FEDERAL DISTRICT COURT:

2 PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1332, 1441 & 1446, defendant  
3 Costco Wholesale Corporation, by and through its undersigned counsel, hereby removes Case No.  
4 20CV367174, pending in the Superior Court of California for the County of Santa Clara, to the  
5 United States District Court for the Northern District of California, San Jose Division.

6 Removal is based on complete diversity of citizenship, because diversity of citizenship  
7 exists between the lone plaintiff, Elia Quintana, and the lone named defendant, Costco Wholesale  
8 Corporation, and the amount in controversy exceeds the jurisdictional minimum. *See*, 28 U.S.C. §  
9 1332.

10 **I. BACKGROUND.**

11 On June 8, 2020, this civil action was commenced in the Superior Court of the State of  
12 California in and for the County of Santa Clara, entitled, *Elia Quintana v. Costco Wholesale*  
13 *Corporation and Does Nos. 1 to 50*, Case 20CV367174.

14 On June 26, 2020, defendant Costco Wholesale Corporation was served, through its agent  
15 for service in California, CT Corporation, with the Summons and the Complaint.

16 On or about July 17, 2020 Costco Wholesale Corporation filed and served its Answer to  
17 the Complaint, being ignorant of facts establishing diversity of citizenship between the parties.

18 Plaintiff Elia Quintana alleges in her California Judicial Council form Complaint that on  
19 July 12, 2018 she slipped and fell on an allegedly dangerous condition on Costco Wholesale  
20 Corporation's property located at 1000 Rengstorff Avenue in Mountain View, California. She  
21 asserts causes of action for general negligence and premises liability. Her complaint ambiguously  
22 claims damages in excess of twenty-five-thousand dollars (\$25,000).

23 On October 30, 2020, Costco Wholesale Corporation's counsel of record was served with a  
24 formal offer to compromise, dated October 27, 2020, pursuant to California Code of Civil  
25 Procedure ("CCP") § 998, seeking consent to entry of judgment in the amount of one million  
26 dollars (\$1,000,000) from Costco Wholesale Corporation. The formal offer suggests that the  
27 amount in controversy exceeds one million dollars.

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1 In accordance with 28 U.S.C. § 1446(a), a copy of all process, pleadings and orders  
2 received by Costco Wholesale Corporation, including the Summons and Complaint, are attached  
3 hereto and incorporated herein by reference as **Exhibit A**.

4 **II. THIS NOTICE OF REMOVAL IS TIMELY FILED.**

5 The removal of this civil action to this Court is timely under 28 U.S.C. § 1446(b) because  
6 this Notice of Removal is filed within thirty (30) days after October 30, 2020, which is the date  
7 defendant Costco Wholesale Corporation, through its counsel, first learned from counsel for Elia  
8 Quintana of facts establishing federal subject matter jurisdiction by virtue of diversity of  
9 citizenship of the parties and an amount in controversy exceeding the jurisdictional minimum.  
10 Also, less than one year has elapsed since commencement of the action. 28 U.S.C. § 1446(c)(1).

11 The United States District Court for the Northern District of California, San Jose Division,  
12 is the proper place to file this Notice of Removal under 28 U.S.C. § 1441(a) because it is the  
13 federal district court that embraces the place where the original state court action was filed and is  
14 pending.

15 **III. THIS COURT HAS DIVERSITY OF CITIZENSHIP JURISDICTION.**

16 Lone plaintiff Elia Quintana and lone named defendant Costco Wholesale Corporation are  
17 citizens of different states. On information and belief, Elia Quintana is a resident of California.  
18 Costco Wholesale Corporation is a corporation formed under the laws of State of Washington with  
19 its principal place of business in Issaquah, Washington.

20 On information and belief, Elia Quintana's claim for damages in unspecified amounts  
21 exceeds the jurisdictional minimum of seventy-five thousand dollars (\$75,000) for diversity  
22 jurisdiction in federal court. As mentioned above, on October 30, 2020, Costco Wholesale  
23 Corporation's counsel of record was served with a formal offer to compromise, dated October 27,  
24 2020, pursuant to CCP § 998, seeking consent to entry of judgment in the amount of one million  
25 dollars (\$1,000,000) from Costco Wholesale Corporation. The formal offer suggests that the  
26 amount in controversy exceeds one million dollars. On information and belief, said statutory offer  
27 to compromise reasonably estimates Elia Quintana's claim and therefore, under controlling Ninth  
28 Circuit law, constitutes an "other paper from which it may first be ascertained that the case is one

1 which is or has become removable,” pursuant to 28 U.S.C. § 1446(b)(3). *Babasa v. LensCrafters,*  
 2 *Inc.*, 498 F.3d 972, 975 (9<sup>th</sup> Cir. 2007) (pre-mediation settlement letter is an “other paper” within  
 3 meaning of § 1446(b)(3)) (“*We previously have held that “[a] settlement letter is relevant*  
 4 *evidence of the amount in controversy if it appears to reflect a reasonable estimate of the*  
 5 *plaintiff’s claim.*”) (emphasis added), citing, *Cohn v. Petsmart, Inc.*, 281 F.3d 837, 840 (9<sup>th</sup> Cir.  
 6 2002); accord, *Ali v. Setton Pistachio of Serra Bella, Inc.*, Case No. 1:19-cv-00959-LJO-BAM,  
 7 2019 WL 6112772, at \*2 (E.D.Cal. Nov. 18, 2019) (“settlement offers” are “other papers”), citing,  
 8 *Babasa; Romulus v. CVS Pharmacy, Inc.*, 770 F.3d 67, 78 (1<sup>st</sup> Cir. 2014); but see, *Proctor v.*  
 9 *Worthington Cylinder Corp.*, Case No. 10-cv-08409-EMC, 2020 WL 1146740, at \*2 (N.D.Cal.  
 10 March 10, 2020) (“the Court rejects the . . . argument that the 998 Offer constitutes an ‘other paper  
 11 from which it may first be ascertained that the case is one which is or has become removable’”).  
 12 The *Proctor* decision is anomalous because it fails to cite or distinguish Ninth Circuit decisions in  
 13 *Babasa* and *Cohn*.

14 Therefore, federal diversity of citizenship jurisdiction exists over this action pursuant to 28  
 15 U.S.C. §§ 1332.

#### 16 **IV. ALL NAMED DEFENDANTS CONSENT TO THE REMOVAL.**

17 This Notice of Removal is filed on behalf of named defendant Costco Wholesale  
 18 Corporation. There are no other named defendants, only Doe defendants. Therefore, by  
 19 definition, all named defendants have consented to the removal of this action.

#### 20 **V. NOTICE OF REMOVAL TO PLAINTIFF AND** 21 **THE SANTA CLARA COUNTY SUPERIOR COURT.**

22 Concurrently with this Notice of Removal, defendant Costco Wholesale Corporation will  
 23 file a Notice to Plaintiff of Removal of Action to Federal Court, along with a copy of this Notice  
 24 of Removal with the Superior Court of the State of California in and for the County of Santa  
 25 Clara, and in accordance with 28 U.S.C. §§ 14446(d), defendant Costco Wholesale Corporation  
 26 will serve a copy thereof upon counsel for plaintiff Elia Quintana. A copy of the prepared Notice  
 27 to Plaintiff of Removal of Action to Federal Court is attached hereto and incorporated herein by  
 28 reference as **Exhibit B**.

1 If any question arises as to the propriety of the removal of this action, counsel for  
2 defendant Costco Wholesale Corporation respectfully requests the opportunity to present a brief  
3 and oral argument in support of the position that this case is removable.

4 **VI. CONCLUSION.**

5 For the foregoing reasons, defendant Costco Wholesale Corporation respectfully requests  
6 that this civil action be, and is hereby, removed to the United States District Court for the Northern  
7 District of California, San Jose Division, that said federal district court assume jurisdiction of this  
8 civil action, and that this Court enter such further orders as may be necessary to accomplish the  
9 requested removal and to promote the ends of justice.

10 Dated: November 11, 2020

CASEY LAW GROUP

11  
12 By: 

13 ARTHUR J. CASEY

14 DONALD P. GAGLIARDI

15 Attorneys for Defendant

16 COSTCO WHOLESALE CORPORATION  
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